

## REMARKS

Claims 1-57 are pending. Claims 33-57 are withdrawn. Claims 1-32 are rejected. Claim 19 is objected to.

Applicant hereby cancels claims 1 - 7 and claims 19-27. The remaining pending claims are 8 - 18, 28 -32, and 33 - 57 (withdrawn).

Claim 8 is currently amended to incorporate the subject matter of claim 1 and claim 7 (both now canceled) from which claim 8 used to depend from. Claim 8 is now an independent claim.

Of the remaining claims, claims 8 - 18 and 28 - 32 are rejected under 35 USC 102(b) as being anticipated by Talabar et al. (U.S. Patent 6,261,291). The rejection of these claims should be withdrawn for at least two reasons: First, the ground of rejection simply do not address or even attempt to address how the '291 patent anticipates the limitations of the claims, including now canceled claims 1 - 7 and 19-27. Second, even if the grounds did attempt to address how the '291 patent anticipates the limitations of the claims, they would be incorrect since, as explained below, the '291 patent fails to disclose in anticipation or suggest as a basis for an obviousness rejection, various elements of the claims.

Independent claim 8 recites that the second end of the fastener has a locking portion including a large diameter section greater than said first diameter and positioned between two smaller diameter sections, and that the split ring is positioned around one of the smaller diameter sections to retain the fastener. The device shown in the '291 patent is drastically different. Looking at Figs. 5 and 6 of the '291 patent, it is clear that the fastener is retained when its head 24 sits below the split ring 12. There is no disclosure or suggestion whatsoever that the fastener is retained when the split ring is positioned around any part of the fastener, and certainly not having the large and smaller diameter sections as recited in claim 8. The fastener and fastener head of the '291 patent have no section around which the split ring can reside to retain it. The Examiner did not even bother to address this limitation.

Dependent claim 9 recites that the second end of the fastener is threaded. The '291 patent neither discloses nor suggests such a limitation, and the Examiner did not even address this

limitation.

Dependent claim 10 recites that the second end of the fastener is generally spherical and is threaded over a portion including said large section. The '291 patent neither discloses nor suggests such a limitation, and the Examiner did not even address this limitation. As discussed above, there is no teaching or suggestion of a large section in the '291 patent.

Independent claim 13 recites that the fastener is retained when said resilient member is position around it. As discussed above, there is no teaching or suggestion whatsoever in the '291 patent that the resilient member is positioned around it while retaining it. Instead, as discussed above, the resilient member, which is a split ring, is located above the fastener, and not around it, as shown in Figs. 5-6.

Dependent claim 15 recites that the resilient member surrounds the shaft. The '291 patent neither discloses nor suggests such a limitation, and the Examiner did not even address this limitation. As discussed above, the resilient member is located above, not surrounding, the shaft.

Claim 16 is an independent claim that recites that the head of the bone screw has a middle portion of greater diameter than two oppositely located portions on either side of it that have smaller diameters, and that the head is prevented from removal when a retention member is positioned around the head at one of the smaller diameter portions. The '291 patent neither discloses nor suggests such a limitation, and the Examiner did not even address this limitation. As discussed above, with reference to Figs. 5-6 of the '291 patent, the '291 patent discloses something much different.

Claim 17 is a dependent claim that recites that the head is threaded. The '291 patent neither discloses nor suggests such a limitation, and the Examiner did not even address this limitation.

Claim 18 is a dependent claim that recites that the head is threaded over the middle portion. The '291 patent neither discloses nor suggests such a limitation, and the Examiner did not even address this limitation. The fastener head of the '291 patent does not even have a middle portion within the meaning of the present claims, as discussed above.

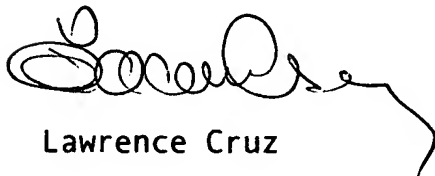
Claim 28 is an independent claim that recites that the shaft is retained when the resilient member is positioned around the fastener. The '291 patent neither discloses nor suggests such a limitation, and the Examiner did not even address this limitation. As discussed above, with reference to Figs. 5-6 of the '291 patent, the '291 patent discloses something much different.

Claim 31 is an independent claim that recites that the bone screw head has middle portion with a larger diameter than the two portions next to it which have smaller diameters, and that the screw is retained when the retention member is positioned around one of the smaller diameter portions. The '291 patent neither discloses nor suggests such a limitation, and the Examiner did not even address this limitation. As discussed above, with reference to Figs. 5-6 of the '291 patent, the '291 patent discloses something much different.

Claim 32 is a dependent claim that recites that the head is threaded. The '291 patent neither discloses nor suggests such a limitation, and the Examiner did not even address this limitation.

The claims are now in condition for allowance. Favorable action is requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lawrence Cruz', with a long, sweeping horizontal stroke extending to the right.

Lawrence Cruz

Reg. No. 36,385

tel 203 417 4508